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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,113	01/28/2004	Verla D. Harker	24075.00	9697
37833	7590	02/08/2005		
LITMAN LAW OFFICES, LTD.			EXAMINER	
P.O. BOX 15035 CRYSTAL CITY STATION			NGUYEN, TAM M	
ARLINGTON, VA 22215				
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/765,113	HARKER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tam Nguyen	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6,8,9 and 12-14 is/are rejected.
- 7) Claim(s) 7,10,11 and 15 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 1-28-04.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Melby (4,705,028).

1. As to claims 1, 2, 12 and 13, Melby discloses an exercise device comprising a housing defining two compartments, a tread (6) positioned within each compartment, a handle (1), guide means (19) and a spring means (18), having a plurality of coiled compression springs, positioned within each compartment supporting the tread (see Figs. 1 & 4).

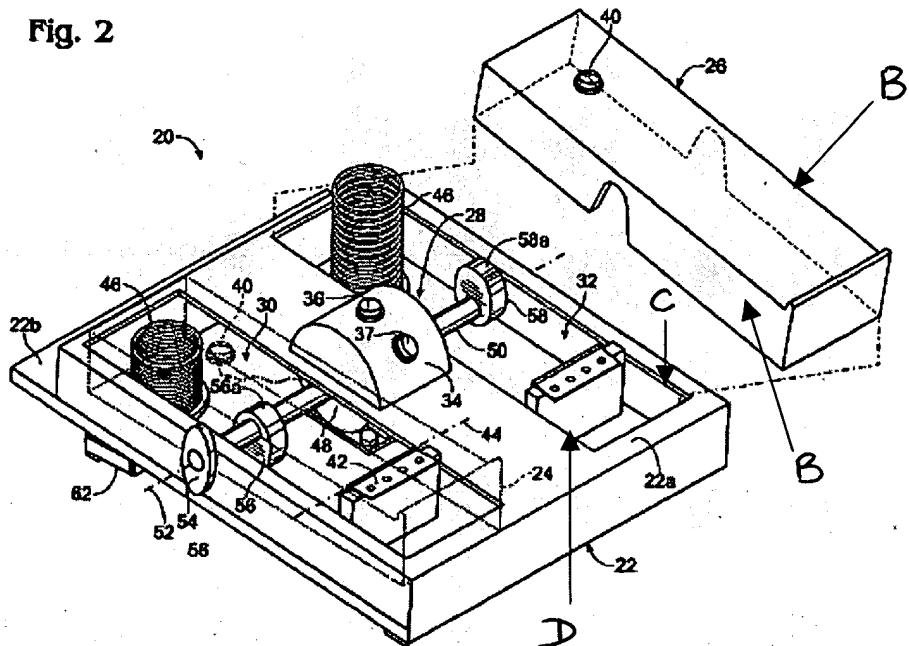
2. As to claims 5 and 14, Melby discloses an exercise device as described above. Melby further discloses that the tread includes a stabilizing means (15,35) that limits the lateral roll of the tread (see Figs. 4 & 7 and Col. 4, lines 30-33).

Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Calafato (6,572,514).

Art Unit: 3764

3. As to claims 1-3, Calafato discloses an exercise device comprising a housing defining two compartments, a tread (28) positioned within each compartment and a spring means (46), having a plurality of coiled compression springs, positioned within each compartment supporting the tread wherein the spring is anchored at both ends of each of the springs to the tread and to the housing (see Figs. 1-7 & Col. 3, lines 50-52 and 59-60).

4. As to claim 6, Calafato discloses an exercise device as described above (see discussion of claims 1-3). Calafato also discloses that each tread includes stabilizing means (sides - B) to limit lateral roll of the tread wherein each compartment includes sidewalls (C and D) to the left and right of said tread and the stabilizing means comprise a surface fixed to the tread and located on each side of the tread to engage a respective one of the side walls (see Fig. 2 below).

**Fig. 2*****Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

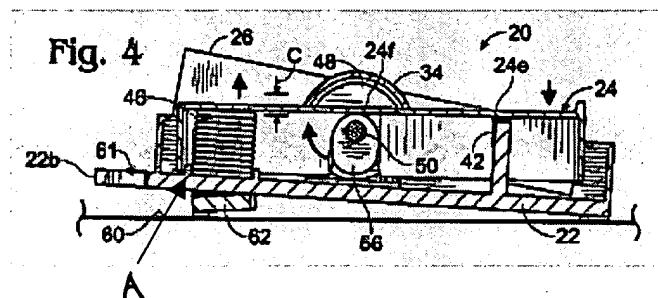
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Calafato (6,572,514) in view of Homyonfer et al. (5,755,651).

5. As to claims 1-4, Calafato discloses an exercise device as described above (see discussion of claim 3 as described above). Calafato discloses an anchor (raised circular protuberance - A) but not one that comprises a raised cylinder

Art Unit: 3764

around which an end of one of the springs extends (see Fig. 4 below and Col. 3, lines 50-52). Homyonfer et al. disclose an exercise device having a tread (50) and a compression spring (74) anchored to a raised cylinder as substantially claimed (see Fig. 5). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use any of an array of spring anchors including a raised cylinder to secure the spring since the raised cylinder and the raised protuberances are functionally equivalent in the exercise art in providing a stable and secure spring anchoring means.



Claims 1, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melby (4,705,028).

6. As to claims 1, 8 and 9, Melby discloses an exercise device as described above (see discussion of claim 1 above). Melby does not disclose that the tread further includes friction- enhancing means having a textured rubber mat for increasing friction between the tread and a foot of a user. The examiner takes Official Notice that the prior art includes exercise devices having treads that include textured rubber mats for improved friction between the tread and a foot of a user. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add any of an array of friction means including a

rubber mat to Melby's treads to improve the frictional grip between the tread and the user for enhanced user stability and comfort.

***Allowable Subject Matter***

7. Claims 7, 10, 11 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Katz '415, Ma '708 and Chou '666 each disclose an exercise device having a spring fixed between a tread and a base.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F, 9-5.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 2, 2005

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*SR Crow*  
STEPHEN R. CROW  
PRIMARY EXAMINER  
ART UNIT 332